



FH
4161455445

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

David Perkins
c/o Brookfield Rehab
18740 W Bluemound Road
Brookfield, WI 53045

DECISION

MGE/157042

PRELIMINARY RECITALS

Pursuant to a petition filed April 22, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance, a hearing was held on May 20, 2014, at Waukesha, Wisconsin.

The issue for determination is whether the agency correctly calculated the Petitioner's Patient Liability.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

David Perkins
c/o Brookfield Rehab
18740 W Bluemound Road
Brookfield, WI 53045

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Sean Carlson, Economic Support Specialist
Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # 4161455445) is a resident of Waukesha County.
2. On April 15, 2014, the agency sent the Petitioner a notice indicating that his application for Medicaid benefits was approved and that as of February 1, 2014, he would be eligible for Institution Long Term Care Medicaid with a patient liability of \$1,948.72 per month. (Exhibit 4)

3. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on April 22, 2014. (Exhibit 1)
4. Petitioner receives income from Social Security in the amount of \$1,634.90 per month and from two pensions totaling \$1064.22 per month. (Exhibit 4, pg. 4; Exhibit 6 and Exhibit 7)
5. Petitioner pays Medicare Part B premiums in the amount of \$104.90 per month. (Exhibit 4, pg. 4)
6. Petitioner has also had a number of out-of-pocket medical expenses. (Exhibit 2)
7. Petitioner has a community spouse. (Testimony of Petitioner's spouse)
8. Petitioner's spouse is employed and earns \$556.75 per week / \$2227 per month. (Exhibit 4; Exhibit 5)
9. Petitioner's spouse pays \$973.44 per month on a mortgage and \$64.83 per month for homeowner's insurance. (Exhibit 4; Testimony of Petitioner's Spouse)

DISCUSSION

Medicaid Eligibility Handbook (*MEH*) explains how a person's patient liability is determined in §27.7.1 ILTC :

After an institutionalized person has been determined eligible for Medicaid, his/her cost of care must be calculated. Cost of care is the amount s/he will pay each month to partially offset the cost of his/her Medicaid services. It is called the patient liability amount when applied to a resident of a medical institution and cost share when applied to a community waivers client, Pace/ Partnership, or Family Care client. The institutionalized member will be expected to pay their patient liability to the institution that they are residing in as of the first day of the month.....

For an Institutionalized Medicaid member in a medical institution who has a community spouse, the patient liability is determined using Worksheet 7 and the Spousal Impoverishment Income Allocation guidelines in *MEH* §18.6. *Id.* ¶2

According to Worksheet 7, the Patient Liability Calculation is as follows:

Institutionalized Persons' Income
 - Personal Maintenance Allowance
 - Community Spouse Income Allocation
 - Dependent Family Member Allocation
 - Any Court Ordered Guardian or Attorney Fees
 - Special Exempt Income
 - Health Insurance Premiums /Out of pocket Medical/Remedial Expense

Cost of Care / Patient Liability

MEH §18.6.4; §40.1; Worksheet 7

Looking at the Institution Budget Printout for May 2014, it is clear that the agency did not account for \$140 monthly Medicare Premiums for which Petitioner is liable. *See Exhibit 3* It is also apparent that the agency did not include any deductions for Petitioner's out of pocket medical expenses. *Id.*

Petitioner's Spouse provided documentation of Petitioner's out of pocket medical expenses in Exhibit 2:

Advanced Foot Specialists – pg. 4

Wisconsin Retina – pgs. 5 and 9

Physician Bills – pgs. 7 & 8 and 32 & 33

Omnicare Pharmacy – pgs. 27 & 28; 36 & 37, 39 & 40, 43&44

Alka Kohli/Brookfield Rehabilitation – pgs. 29-31

Bell Ambulance pgs. 35 and 35

Consequently, the agency will need to review Exhibit 2 and re-determine the Petitioner's Patient Liability, taking into account Petitioner's health insurance premiums and any allowable medical/remedial expenses.

Community Spouse Income Allocation

Petitioner's spouse also asserted that the Community Spouse Income Allocation was not correct.

State and federal medical assistance laws contain provisions that allow an institutionalized person to allocate some of her income to her spouse so that he does not fall into poverty. *See* Wis. Stat. § 49.455 and 42 U.S.C. §13964-5; also see *MEH §§18.1 and 18.6.1*. This is called a Community Spouse Income Allocation or CSIA. (Id.)

Generally speaking, the Community Spouse Income Allocation is calculated by taking the Minimum Monthly Maintenance Needs Allowance (MMMNA) and subtracting from that amount, the Community Spouse's gross monthly income. *MEH §§18.1 and 18.6.1*.

The MMMNA currently is the **lesser** of \$2,898 or \$2,585.67 plus excess shelter costs. *MEH § 18.6.2*. Excess shelter costs are shelter costs above \$775.50. Id. Administrative law judges (ALJs) have the authority to increase the CSIA above the MMMNA when the MMMNA is insufficient to meet a particular community spouse's basic maintenance needs and when there exist "exceptional circumstances resulting in financial duress" for the community spouse. *Wis. Stat. §49.455(8)(c); Wis. Admin. Code §DHS 103.075(8)(c); MEH §18.6*. "Exceptional circumstances resulting in financial duress" means situations that result in the community spouse not being able to provide for his or her own necessary and basic maintenance needs". *Wis. Admin. Code §DHS 103.075(8)(c); emphasis added*.

In Petitioner's case, the MMMNA is \$2,898, because that is less than \$2,521.67 + excess shelter costs:

Petitioner's shelter costs are:

\$973.44 Mortgage
\$64.83 Property Tax
+ \$450.00 Standard Utility Allowance under the FoodShare program
<hr/>
\$1488.27

Thus, Petitioner's excess shelter costs are:

\$1488.27
-\$775.50
<hr/>
\$712.77

$$\$2,585.67 + 712.50 \text{ excess shelter cost} = \$3,298.44 > \$2,898$$

Petitioner's spouse presented testimony and documentation concerning the following monthly expenses:

1. Gerber Life Insurance

This is not an allowable expense, as it is not a basic and necessary living expense for the Petitioner's spouse; it is a benefit for her survivors.

2. Advanced Foot Specialists	\$171.00 / 12 months =	\$14.25
3. Wheaten Franciscan Urgent Care	\$514.00 / 12 months =	\$42.83
4. Wheaten Franciscan Hospital/Med	\$2500.91 / 12 months =	\$208.41
5. IRS Back taxes =		\$167.00
6. WI Back taxes =	\$2,766.57 / 12 months =	\$230.55
7. State Farm Car Ins. =	\$106.09/ 6 months =	\$17.68
8. Walgreen Rx =		\$12.32
9. X-Press Script =		\$62.34
10. Cellphone =		\$221.98
11. Water/Sewer =	\$142.07 / 3 months =	\$47.37
12. Mortgage =		\$973.44
13. Property Taxes =		\$64.83
14. Utilities - Standard Utility Allowance		\$450.00
15. Gasoline for car =		\$180.00
16. Grocery (Maximum FoodShare allowance for a single person)		\$189.00
17. Credit cards =		\$847.87

Discover = \$7,613.57
 Home Depot = \$805.12
 Capital one = \$693.49
 Kohl's \$169.88
 Landmark Visa = \$892.42

$$\$10,174.48 / 12 \text{ months} = \$847.87$$

The credit card debt accumulated by Petitioner and his spouse is a source of financial duress for Petitioner's spouse. The above allowance should help her get the debt under control. **However, Petitioner's spouse should note, that after 12 months, her monthly expenses should be reviewed, to make sure she is handling her debt responsibly, as spousal impoverishment rules were not intended to subsidize unnecessary spending.**

18. Dental Insurance	\$1.20 x 4 weeks =	\$4.80
19. Withholdings =		\$419.20

Social Security Tax = \$34.45 per week
 Medicare Tax = \$8.05
 Fed. Income Tax = \$36.49
 State Income Tax = \$25.81

$$\$104.80 \times 4 \text{ weeks} = \$419.20$$

(See Exhibits 2, 4 and 5)

Totaling the allowable expenses listed above we have: \$4153.87. Thus, an adjustment in the MMMNA is warranted.

Thus, the community spouse income (CSIA) allocation works out to be as follows:

\$4153.87 MMMNA
-\$2227.00 Income of Community Spouse
<hr/>
\$1926.87 CSIA

Again, the agency will have to re-determine the Petitioner's patient liability, using this CSIA.

If Petitioner/Petitioner's spouse disagrees with the new determination, Petitioner will have to file a NEW request for fair hearing.

CONCLUSIONS OF LAW

The agency did not correctly determine the Petitioner's patient liability, effective February 1, 2014.

THEREFORE, it is

ORDERED

That the agency re-determine Petitioner's patient liability taking into account 1) a MMMNA of \$4153.87 / CSIA of \$1926.87 2) any health insurance premiums paid by the Petitioner, including Medicare Part B premiums and 3) any other allowable medical/remedial expenses documented in Exhibit 2. The agency shall take all administrative steps necessary to complete these tasks within 10-days of this decision.

At the time of Petitioner's annual renewal, the agency shall re-examine the living expenses of Petitioner's spouse to see if use of the standard MMMNA is warranted.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

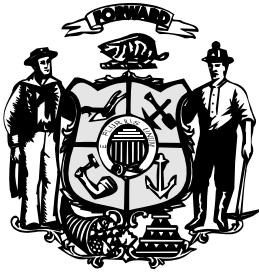
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 3rd day of July, 2014.

\s\sMayumi M. Ishii
Administrative Law Judge

Division of Hearings and Appeals



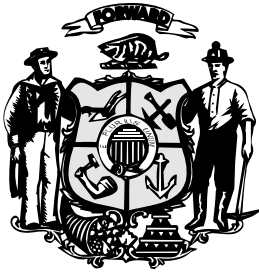
State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
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Telephone: (608) 266-3096
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email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on July 3, 2014.

Waukesha County Health and Human Services
Division of Health Care Access and Accountability



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